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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

EVE STEELE, Plaintiff and Respondent, v. WOOD WORNALL et al., Defendants and Appellants.	B259546 (Los Angeles County Super. Ct. No. BC497135)

APPEAL from an order of the Superior Court of Los Angeles County, Suzanne G. Bruguera, Judge. Affirmed.

Castro & Associates, Joel B. Castro, Ruth Scott and David H. Pierce for Defendants and Appellants.

Towle Denison Smith & Maniscalco and Michael C. Denison for Plaintiff and Respondent.

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This lawsuit involves a dispute over ownership of certain purebred Australian Terriers. Plaintiff Eve Steele alleged, among many other causes of action, defamation and extortion. The trial court denied defendants Wood Wornall and Jennifer Rangel's (collectively, the Wornalls) special motion to strike theses causes of action under Code of Civil Procedure section 425.16,[1] the so-called anti-SLAPP[2] statute. We affirmed the order denying the anti-SLAPP motion in a recent nonpublished opinion. (*Steele v. Wornall* (June 1, 2015, B255937) (*Steele I*).) After the court denied the anti-SLAPP motion, Steele moved for attorney fees and costs under the anti-SLAPP statute. The court granted the motion and awarded Steele roughly $101,000 in attorney fees and costs. We affirm the attorney fees order.

FACTS AND PROCEDURE

1. Allegations of the Complaint

The complaint alleged as follows. Steele breeds award-winning and championship Australian Terriers recognized throughout the world as superior and valuable. For at least nine years prior to the filing of the complaint, the Wornalls acted as professional dog handlers for Steele's dogs. Starting in 2006, Steele placed several of her dogs with sisters Tere and Tina Cruz,[3] who agreed to take good care of the dogs and make them available to Steele for showing and breeding purposes.

The Cruzes and the Wornalls conspired to gain ownership and control of the showing and breeding arrangements for the dogs. Beginning in June 2012, Steele permitted the Wornalls to show two of the dogs she had placed with the Cruzes. She directed the Wornalls to send her the bills for their handling services, but she never

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1 Further undesignated statutory references are to the Code of Civil Procedure.

2 SLAPP stands for strategic lawsuit against public participation. (*Moore v. Shaw* (2004) 116 Cal.App.4th 182, 186, fn. 1.)

3 Steele named the Cruzes as defendants in addition to the Wornalls. They did not join in the anti-SLAPP motion, however, and are not parties to this appeal.

received any. After she tried to reach the Wornalls about the bills, they informed her that the Cruzes exclusively owned the dogs at issue, that their clients were the Cruzes, and that they took directions from the Cruzes only. Tere also began to assert that she, not Steele, owned all the dogs Steele had placed with the Cruzes. The Cruzes retained physical custody of the dogs and refused to deliver them to Steele.

Steele alleged 12 causes of action in the complaint, including defamation and extortion. The defamation cause of action alleged that, in furtherance of the Wornalls' and the Cruzes' plan to deprive Steele of her ownership rights in the dogs, the Wornalls published the untrue statements that Steele did not pay handler bills and violated ethical rules and regulations of the Australian Terrier Club of America (ATCA). The extortion cause of action alleged that the Wornalls and the Cruzes made false claims of ownership rights in the dogs to third parties for the purpose of pressuring Steele to accede to the Cruzes' demands for ownership. They also caused Steele to receive a threat in the form of a September 2012 letter from an attorney, "whereby [they] threatened to take and pursue and prosecute action against [Steele] before the Board of Directors of the ATCA, based on false allegations of misconduct."

2. Anti-SLAPP Motion,* Steele I, *and Fee Motion

The Wornalls filed an anti-SLAPP motion to strike the defamation and extortion causes of action. The court denied the motion, explaining that the Wornalls had not shown the alleged defamatory statements and extortion were protected activity under either subdivision (e)(3) or (4) of section 425.16—that is, the Wornalls did not make the statements in a public forum or in connection with an issue of public interest. In light of this ruling, the court did not reach the second prong of the analysis and declined to discuss whether Steele had shown a probability of prevailing on the challenged causes of action.

In *Steele I*, we affirmed the order denying the anti-SLAPP motion. We agreed with the trial court that the challenged statements were not protected activity because they were not made in connection with an issue of public interest (§ 425.16, subd. (e)(3)) or a public issue (§ 425.16, subd. (e)(4)). (*Steele I, supra*, B255937.) We held that the

dispute over the ownership of the dogs, fueled by allegations of unpaid handler bills and ATCA code of ethics violations, was a private dispute between private parties, which affected only the small number of people directly involved. Moreover, to the extent the Wornalls were relying on section 425.16, subdivision (e)(2) to assert that the attorney letter referencing action before the ATCA board was protected activity, ATCA proceedings were not legislative, executive, judicial, or any other official proceedings authorized by law. (*Steele I, supra*, B255937.)

After the trial court denied the anti-SLAPP motion, Steele moved for attorney fees and costs incurred in opposing the anti-SLAPP motion under sections 128.5 and 425.16, subdivision (c)(1), arguing that the motion was frivolous or filed solely for purposes of unreasonable delay. The trial court granted the motion and adopted Steele's 12-page proposed order with minor alterations.

First, the court held that the anti-SLAPP motion was frivolous, insofar as the Wornalls ignored evidence and case law contrary to their position. Further, looking at the "guiding principles" identified in the case law for determining whether an issue is one of public interest, the Wornalls did not follow any of these principles. There was no evidence to suggest that the Wornalls made their challenged statements in connection with a public issue. The Wornalls relied on clearly inapposite or distinguishable case law. They also twice ignored suggestions by Steele's counsel to withdraw the motion for lack of merit when he sent them letters drawing their attention to recently published cases that undermined their position.

Second, the court held that the Wornalls intended the motion solely for the purpose of delay. They knew or should have known that the filing of the anti-SLAPP motion would stay all discovery pursuant to section 425.16, subdivision (g), and any appeal of an adverse ruling would trigger a new stay. They had to know that the lengthy delays would pressure Steele to rapidly end the case by dismissal or a settlement favorable to them, especially because a lengthy delay would significantly adversely affect the showing and breeding careers of the dogs at issue.

The court awarded Steele $101,184.32 in attorney fees and costs incurred in opposing the anti-SLAPP motion and attorney fees incurred in bringing the attorney fees motion. The Wornalls timely appealed from the order.

DISCUSSION

Under the anti-SLAPP statute, the court shall award costs and reasonable attorney fees to the plaintiff when it finds that an anti-SLAPP motion was "frivolous or . . . solely intended to cause unnecessary delay . . . pursuant to Section 128.5." (§ 425.16, subd. (c)(1).) Section 128.5, incorporated into the anti-SLAPP statute, uses essentially the same language to describe sanctionable conduct. It states that a trial court may order a party to pay the reasonable attorney fees "incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (§ 128.5, subd. (a).) "Frivolous" is defined as "totally and completely without merit or for the sole purpose of harassing an opposing party." (§ 128.5, subd. (b)(2).) "Frivolous in this context means that any reasonable attorney would agree the motion was totally devoid of merit." (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 450.)

We review an order granting attorney fees under the anti-SLAPP statute for abuse of discretion. (*Gerbosi v. Gaims, Weil, West & Epstein, LLP, supra*, 193 Cal.App.4th at p. 450.) The court abuses its discretion when its ruling exceeds the bounds of reason, and appellant has the burden of establishing an abuse of discretion. (*Ibid.*)

Here, we disagree with the Wornalls that court erred in awarding attorney fees and costs to Steele. A large portion of the Wornalls' briefing in this appeal relates to the merits of their anti-SLAPP motion, which we have already rejected in *Steele I*. As we explained there, the Wornalls wholly failed to meet their threshold burden of establishing that the defamation and extortion causes of action arose from protected activity. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) They had to show their statements were made in connection with a public issue or an issue of public interest. (§ 425.16, subd. (e)(3), (4).) We cannot say the court abused its discretion in finding the anti-SLAPP motion frivolous, in light of the total lack of connection to an issue of public

interest here. Like we noted in *Steele I*, "[t]he anti-SLAPP statute does not define an issue of public interest or public issue, and as at least one court has noted, 'it is doubtful an all-encompassing definition could be provided.' [Citation.] Courts have construed 'issue of public interest' broadly 'to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity.'" (*Steele I*, *supra*, B255937.) But a billing dispute between a dog owner and her handlers is not an issue of public interest, nor is the question of who owns the dogs, Steele or the Cruzes. Neither of these issues are governmental or even quasi-governmental, and they do not impact the dog-breeding community as a whole, much less a broad segment of society. They concern solely Steele, the Wornalls, and the Cruzes.

The Wornalls also attempted to argue that the safe and healthy treatment of dogs is an issue of public interest, and the causes of action were connected to this issue because the Wornalls allegedly published statements that Steele had breached the ATCA ethical rules by failing to use written contracts with the Cruzes, which rules exist to protect Australian Terriers. The broad and amorphous public interest in the safe and healthy treatment of dogs cannot be closely connected to this private dispute. "[W]e must focus on 'the *specific nature of the speech* rather than the generalities that might be abstracted from it.'" (*World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1570.) The Wornalls did not allege Steele had endangered any dogs. There was no disciplinary action pending against Steele and thus no ongoing public debate or discussion in which the ATCA membership might participate. (*Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1468.) Moreover, according to Steele's complaint, the focus of the Wornalls' conduct was not an interest in the welfare of dogs. Their statements were merely ammunition in the private dispute between the parties and part of their attempt to embarrass Steele and force her to transfer ownership of the dogs. (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1133 (*Weinberg*).)

We noted in *Steele I* that two decisions in the body of anti-SLAPP case law had attempted to distill the public interest issue down to a series of categories or factors. "In one case, *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 919-924 (*Rivero*), the court surveyed a number of cases on the issue and identified three categories of statements falling within the public interest. The statements concerned either (1) 'a person or entity in the public eye,' (2) 'conduct that could directly affect a large number of people beyond the direct participants,' or (3) 'a topic of widespread public interest.' (*Id*. at p. 924.)" (*Steele I, supra,* B255937.) "Similar to the *Rivero* court, the court in *Weinberg* articulated '[a] few guiding principles . . . derived from decisional authorities.' (*Weinberg, supra,* 110 Cal.App.4th at p. 1132.) 'First, "public interest" does not equate with mere curiosity. [Citations.] Second, a matter of public interest should be something of concern to a substantial number of people. [Citation.] Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. [Citations.] Third, there should be some degree of closeness between the challenged statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient [citation]. Fourth, the focus of the speaker's conduct should be the public interest rather than a mere effort "to gather ammunition for another round of [private] controversy . . . ." [Citation.] Finally, "those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." [Citation.] A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.' (*Id*. at pp. 1132-1133.)" (*Ibid*.) *Steele I* explained how there was no evidence that any of these categories fit or any of these guiding principles were satisfied by the Wornalls' statements. (*Ibid*.)

It was equally clear that the attorney letter to Steele threatening disciplinary action before the ATCA did not qualify as protected activity under a different category, subdivision (e)(2) of section 425.16. Subdivision (e)(2) defines protected activity as "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding

authorized by law." In their anti-SLAPP motion, the Wornalls argued that the attorney letter was, "on its face, a communication that was intimately intertwined with, and preparatory to, the filing of official disciplinary proceedings before the ATCA. Such communications qualify as petitioning activity for the purpose of the anti-SLAPP statute. See *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 784 (***communications preparatory to or in anticipation of bringing*** action or ***other official proceeding*** are protected by anti-SLAPP statute); *Cabral* [*v. Martins* (2009) 177 Cal.App.4th 471,] 481-82." (Boldface and italics in original.) No colorable argument exists, however, that an ATCA proceeding is an "official proceeding authorized by law" (§ 425.16, subd. (e)(2)) such that communications connected to it would be protected activity, as we determined in *Steele I.* (*Steele I, supra*, B255937.)[4]

In short, given this record, the trial court was well within its discretion in finding the anti-SLAPP motion frivolous. In so holding, we acknowledge that a different opinion on frivolousness is possible. We are constrained, however, by the deferential abuse of discretion standard. The opportunity for a different opinion is not sufficient. (*580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 19.) We are """neither authorized nor warranted in substituting [our] judgment for the judgment of

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4 The Wornalls suggest in their reply brief, which was filed after our opinion in *Steele I*, that we labored under a "misunderstanding" insofar as they "have never asserted that *C.C.P.* §425.16(e)(2) applies." The above-quoted passage of their anti-SLAPP motion demonstrates otherwise. They may not have expressly cited subdivision (e)(2), but the argument that the letter was intimately intertwined with and preparatory to the filing of an official proceeding before the ATCA certainly invoked the language of section 425.16, subdivision (e)(2) (communications "in connection with an issue under consideration or review by . . . any other official proceeding authorized by law"). Moreover, the two cases on which they rely in this passage, *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, *supra*, 47 Cal.App.4th at page 784, and *Cabral v. Martins*, *supra*, 177 Cal.App.4th at pp. 479-480, 482, are cases in which the court found protected activity under section 425.16, subdivision (e)(2). They at least impliedly asserted subdivision (e)(2) applied, and we thus found it prudent to address it.

the trial judge"'" under this standard of review, when the trial court's judgment was inside the bounds of reason. (*Id.* at p. 20, italics omitted.)

We need not discuss whether the Wornalls also intended the motion to cause unnecessary delay. Either frivolousness or an intent to cause unnecessary delay may support an award of attorney fees, but both are not required. (§ 425.16, subd. (c)(1).)

Besides arguing that their motion was not frivolous, the Wornalls argue the trial court erred when it held that bad faith was not required to support an award of fees and costs. To review, section 425.16, subdivision (c)(1) does not make any reference to bad faith but incorporates section 128.5, which allows for an award of attorney fees "as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay" (§ 128.5, subd. (a)). The court's order did, indeed, hold that subjective bad faith was not a required element of the anti-SLAPP attorney fees analysis. The court also noted, however, that a frivolous motion or one intended solely to cause delay is, ipso facto, a "bad-faith tactic." Even if the court misstated the law when it said bad faith was not required, we find no cause to reverse. A trial court may infer bad faith from the pursuit of a frivolous tactic. (*Visher v. City of Malibu* (2005) 126 Cal.App.4th 364, 371; *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 633.) We are convinced by the trial court's findings of frivolousness and intent to cause unnecessary delay that it would infer bad faith here, and it basically did so when it noted that such a motion would be a bad-faith tactic ipso facto.

The Wornalls further argue that the costs and attorney fees award was excessive, even if we disagree that the court should have denied the motion outright. We also reject this argument. We review the amount of fees and costs awarded for abuse of discretion. (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1248.) Under the statute, the trial court should award "reasonable" attorney fees. (§ 425.16, subd. (c)(1).) The Wornalls' argument here can best be described as cursory. They simply state in a conclusory manner that "[c]learly" the number of hours spent opposing the motion was excessive, and Steele's counsel should have been able to do it in less time as an expert in anti-SLAPP law. They do not point to

any particular billing entry as padded or fraudulent or cite any portions of record. The court's order described why it believed the fees were reasonable. The court explained that the Wornalls compared the number of hours their counsel spent to those spent by Steele's counsel. But it could take far less time to file a frivolous motion than to oppose one, and Steele had the additional burden of showing that her causes of action had merit on step two of the anti-SLAPP analysis. To this end, the court noted she filed 59 pages of declarations with her opposition, while the Wornalls filed only two pages. The Wornalls have given us no basis to disturb the trial court's discretionary ruling. (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, *supra*, 106 Cal.App.4th at p. 1248.)

As to costs, the Wornalls assert that the trial court allowed costs for parking fees, overnight mail, and photocopying, which were not recoverable under section 1033.5, subdivision (b)(3). The court did not, in fact, award costs for parking and overnight mail according to its order. Steele withdrew her request for those costs prior to the court's ruling. Photocopying costs are allowable costs under section 1033.5 "for exhibits." (§ 1033.5, subds. (a)(13), (b)(3).) The declaration of Steele's counsel established that she incurred the photocopying costs of $826.32 for exhibits filed with her opposition brief. The court did not therefore abuse its discretion in awarding this item as costs.

DISPOSITION

The order is affirmed. Steele shall recover costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J. OHTA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.